city of Nuigsut

PO Box 89148 Nuiqsut, AK 99789

PH:(907) 480-6727 Fax.:(907) 480-6928

FAX TRANSMITTAL FORM

UNITED STATES ENVIRONMENTAL

TO: PROTECTION AGENCY From: COBAINE GARNER

Name: REGION 10 Date Sent: 3-23-10

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Message:

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CITY OF NUIOSUT P O BOX 89148 NUIQSUT. ALASKA 99789 PHONE: 907 480-6727 FAX: 907 480-6928

Office of Mayor, Thomas Napageak Jr

To: United States Environmental Protection Agency 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101-3140

The Shell 2010 Chukchi Sea Exploration has many issues that leave our communities the outcomes of your actions. The process to develop your projects create continuous reactions that are not even discussed as well as minimized in your discussions. The changes around Nuiqsut have expanded beyond understanding and discussions are started here.

The effort to bring substances abnormal and chemicals added to them into the path of migratory species that are consumed by people in our area bring alarms to any one reading them except those who have financial gains to bank in the future. The discussions of the North Slope Borough have ways of decreasing changes. We support these discussions but also bring efforts to encourage restating the broken promises of no spills and no impacts back to the table for discussions.

We discussed ways that would give us hopes of some traditional and cultural activities but we did not get the support to keep these restrictions in place. We need to bring strength into the enforcement of those discussions to change the way activities are changing what is occurring in Nuiqsut and will change the Inupiat way of life in the Chukchi spreading as in the Beaufort. We have much that has changed and more coming with efforts to bring unnatural activity with huge risks upon the future of the Arctic. The efforts to peal the fortunes of the Arctic should not cost the lives of unseen generations of those who learned what and how survival is as the Inupiat have done.

The nourishment of the traditional and cultural lives of the Arctic have strengths that are needed in our times but values in dollars per barrel should be dollars per lives as our health and our lives are rich.

The dollars of others are costing lives, livelihood, and sustenance but comments are unheard. Without taking inventory of what is here the plans to develop are based on others in computer labs calculating formulas to save dollars for profits to those making the plans. The cost for us all is unknown but our comments have continued to ask for support of our traditional and cultural activities that is important. We want to continue these into the future without taking the cost of harm to the health of us, our foods and our future generations.

When you take and put salad dressing upon your food, we are assessing drilling wastes in pristine waters with food we take to our children and elders. We are asked to take changes that effect what we do in the waters around us to bring food to our families, our elders, our community to sustain us through the winters. We know how unforgiving the Arctic waters are and our experience brings knowledge of what works in these waters. We change plans when we are added to the discussion as we learned from the generations we have shared stories to bring us together.

We do not demand the impossible but we do expect protections that will allow us to continue our daily life activities. We understand that there are ways of disposal that may need more information and we encourage that such as for annular injections that would need technical review required for feasible options. The possibility of Fracturing with discharge into the sea is not acceptable and we are supporting the NSB recommendations of backhauling waste to shore as the preferred method during exploratory activities as referenced in the NSB technical report. Shell should conduct a technical review to determine safety and viability of each option before selecting methodology and if unable to meet the criteria then use the tried and true method of back-hauling mud and cuttings to a disposal well.

We ask the state to establish a ACMP alternative measure that reads: "Where annular injections are not feasible, all muds and cuttings must be disposed of at an onshore waste treatment disposal facility." as presented with the NSB.

Alternative Measures re: Ballast Water Exchange

Complete ballast water exchange must take place, without exception, for all vessels prior to entering US waters, to avoid introduction of non-indigenous species into the Chukchi and Beaufort Seas. The single allowable exception to this measure would be emergency cases where there is a possibility of human life endangerment.

The exception in the USCG rule that allows a captain to make an exchange if they determine it might be unsafe but our recommendation to request a condition that requires the captain to wait until the weather is safe to make the exchange so an exchange is not made and may require the vessel to wait a few days and we are not asking for a vessel to engage in any possible life endangering situation.

With the USCG draft federal rule proposal support is relevant for the ballast water exchange requirement as it is what we have as a protective measure now. We encourage support for discussions on the joint goal for the NIS control with support of Shells commitment to protocols designed to limit non-indigenous invasive species (NIS) introductions, all vessels must complete ballast water exchanges before entering the Chukchi Sea

The Alternative Measures Re: Cooling Water and Thermal Discharge

There are many issues left unsaid here and the documentation for supporting decision criteria is not included. There are changes we have seen with activities in our area without the studies to guide the criteria for decisions only self regulated process for changes. We do not want to see the changes continue to expand as they are compounding into the cumulative yet to be assessed. We support backhaul to shore wastewater for thermal and biocides associated discharges which with unevaluated adverse impacts to traditional and cultural activities and resources. There is continued need for more accurate assessment of the effects of thermal and biocide discharges on organisms as we are dependent on the migratory routes for the Arctic.

The National Ocean and Atmospheric Administration (NOAA) criteria for cooling intake flow velocities, should be adhered to with Shell to undertake site-specific analysis of cooling water intake and discharge and provide ADEC with engineering data and calculations to determine actual operating velocities and other environmental conditions at the cooling water intakes.

Alternative Measure re: Toxic Emissions

The traditional and cultural activities of the Inupiat are faced with changes and we support the comments of the NSB ACMP review. The prohibition of discharge with out exception and the practice of every effort to select green/biodegradable chemicals is supported. Toxic, bioaccumulating chemicals and those with low biodegradability, and potential and detrimental mutagenic or reproductive effects and the combinations of pollutants with aggregate toxic effect, the use and discharge is prohibited where no alternative exists, the collection, store and hauled back for disposal at an existing onshore facility and we support this as the best

way to avoid impacts.

ACMP Enforceable Policies NSB Comments

The discussions they bring forth are relevant to our discussions. We support these issues to minimize the potentially serious health risks posed by the project as described as our traditional and cultural activities are effected by your proposal as well as the communities along these same migratory routes. Minimizing or avoiding to the maximum extent practicable adverse impact to air, land and water quality. We support the alternative measures they discuss as outstanding issues with the January 8, 2010 ACMP Elevation meeting on Shells Camden Bay Exploration Plan relevant to the current ACMP review as measures vital to bring the activities towards consistency with the statewide subsistence-use standard at 11 AAC 112.270. The traditional and cultural activities, uses of the area are directly impacted with the changes to health with associated exposures to tainted water or air and ACMP air, land and water standards are inextricably a part and whole to the ACMP subsistence use standard.

The ACMP combined requirement of evaluating the project for compliance with the state environmental quality standards and for the consistency with the subsistence standard is a unique measure which must recognize the reality that the health is key to the issue which affects the Inupiat. The loss of traditional and cultural activities and use is health and this has been repeatable demonstrable adverse impacts on the physical health of our people with a combined affect of both seas deepening the reactions to traditional and cultural intercommunity civilities.

November 9, 2009

As discussed the six alternative measures are necessary to achieve water quality and subsistence use standards. We support DCOM and ADEC to meet with the NSB to discuss the NSB consistency findings for this project.

The process, regulatory and legal issues as applied to ACMP reviews of OCS activities. We appreciate the efforts of the DCOM and ADEC to coordinate their reviews of this project and recommend codify the review process to improve the process for coordination of OCS reviews in the revised regulation and address additional uncertainties inherent in the current regulation. The Federal law requires an evaluation of how the proposed activities and associate facilities would be consistent with the enforceable policies of a states coastal management program. And does not exempt from meeting requirements for the Air- Land and Water Quality Standard at 11 AAC 112.310. We are disappointed at the compliance ignored.

DEC's response for review State agency actions are only advisory for OCS reviews because state can not issue permits in the OCS and because the state's finding can be overturned by the Secretary of Commerce which undercuts provisions of the federal Coastal Zone Management Act. Federal activities and federally permitted activities must be consistency with the enforceable policies of the ACMP including those regulating activities affecting air- land- and water- quality. Enforceable policies demonstrates the state's role is more than advisory.

Consistency with Standards at 11 AAC 112 (other than 112.310)

Inconsistencies for the proposal as presented by the NSB supports the objections to Shells Federal consistency certification of its proposed project as measured against these ACMP enforceable policies. We have supported baseline information needs in discussions for our issues and amplify them again here for the migration of species for our traditional and cultural activities are dependent upon.

Specific information needs are identified for future reviews of activities with what would be needed to determine consistency for future exploration and development projects yet conducting and referencing to studies addressing these important data gaps with statewide standards. NMFS also supported taking a time out to get important data needs for both the Chukchi and Beaufort.

Under Secretary of Commerce to the Minerals Management Service comments from the National Oceanic and Atmospheric Administration on proposed 5 -year oil and gas leasing program letter of September 21,

2009 provides further support specifically related to consistency with statewide standards.

Congress recognized the need for additional information for the Chukchi and Beaufort Seas oil and gas activities in the FY10 Interior and Environmental appropriations bill. Supporting language was added by conferees "recognizing the rich diversity of wildlife and fish resources that are critical to the survival of the Inupiat people." Scientific analysis needed by an independent entity to "ensure sound science-based planning with regard to these important resources, a continuing comprehensive assessment of the health, biodiversity, and functioning of the Arctic marine and coastal ecosystems, including the impacts of industrial activities and of climate change." We are saying the same thing in our traditional and cultural activities request for support needs. We also encourage the incorporation in the traditional ecological knowledge process within this.

The NSB RFAI provided specific information needs for Shell on 11 AAC 112.210(c)-(d) and the discussion provided are supported by us. The issues noted are supported recognizing with the failed demonstrations are that this project will not respond adequately to ice hazards. Vague documentation are failures to demonstrate the ability to respond. With traditional and cultural knowledge we also see the inability of proposal with first hand knowledge and risk factors identified in the NSB discussion and support their discussions. We support the NSB in questioning the DCOM's dismissal of many of the requests for lack of specificity and not requiring the same level of specificity from the applicant. With the NOAA the comments are supported with their September 21, 2009 letter of inconsistency finding.

11 AAC 112.230. Energy Facilities

The list of criteria for the sitting and approval of major energy facilities provide compliance criteria for those facilities defined as a 'major energy facility' which clearly indicates it applies to routine operations as well as sitting of such facilities. The Subsection 11 and 12 require sited to b minimize the probability, along shipping routes, of spills or other forms of contamination that would affect, fishing grounds, spawning grounds, and other biologically productive or vulnerable habitats including marine mammal rookeries and hauling grounds and waterfowl nesting areas/ and so that design and construction of those facilities and support infrastructures in coastal areas will allow for the free passage and movement of fish and wildlife with due consideration for historic migratory patterns.

This intent is to require them to be sited and operated in such a way as to not adversely impact the habitats and ecosystem services listed in the standard. We support that timing is extremely important in avoiding impacts to biological productivity in Arctic marine ecosystems. Yet our community comments on these issues have not heeded a response from activities. Protections are needed. Enforcement of the protections are needed. Criterion to oil and gas exploration activities "avoid areas of high biological productivity" requires these activities not take place during that time of year when biological activity is at its peak. Timing is also critical in terms of biological vulnerability with summer "open water season' it is high and low during the winter frozen months.

The community continues to state concerns with the migration corridor for bowhead whales through the Chukchi Sea and the area used for feeding and resting. Studies showing highly sensitivity to low levels of anthropogenic sounds such as the bowhead deflection from activities associated with BP's Northstar production island. Other studies as noted in the NSB comments support the traditional knowledge shared for generations about concerns to whales and affects to our community. Shell's proposed drilling operations is likely to deflect whales from their migratory path.

The greatest concern is the proposal to discharge considerable amounts of material into the ocean including drilling muds and cuttings, cooling water and other discharges. Traditional knowledge of elders and experienced hunters is available yet relatively little science is available about how bowhead whales respond to such discharges. Whales deflect from smells created by people is a repeated comment provided for decades by whaling captains and hunters.

DNRs identification of baseline data needs are important for the future reviews of activities. Shell has not complete adequate studies and their process has not demonstrated consistency with the Energy Facilities

standard. Specifically information related to the biologically productive or biologically productive or vulnerable habitats, areas of least biological productivity, diversity and vulnerability, and areas where effluents and spills can be controlled or contained is needed.

NOAA comments of September 21, 2009 referenced support for inconsistency findings. Siting of facilities to minimize the probability of spills, challenges to recovery of oil in Arctic conditions, potential impacts to fish and wildlife and their habitats, potential impacts to subsistence uses and potential socioeconomic effects.

The additional comments provided by the NSB for finding the Shell's proposed Chukchi Sea EP is inconsistent with statewide standards for Energy Facilities are supported in our comments. References to Subsection (a)(1) is very important as we discuss the changes we have experienced and compound them with what is coming as well as diversifying with the various activities that are increasing in the area. We have continued to comment on the importance of the traditional and cultural uses of the area and the sharing of the foods from this area. Yet the process continued and there is the non existing discussion of the review of oil spill measures if an accidental discharge of oil and/or other materials which would have adverse impact with both significant environmental and social consequences.

Subsection (a)(3)and (a)(4) require consolidating facilities whenever possible yet discussion for the practicable use of existing onshore facilities for disposal of muds, cuttings, sanitary wastes and other discharges are not included, what are we to think it is like salad dressing don't worry because the ocean is big.

Subsection (a)(11) the siting of facilities to minimize the probability of spills or other forms of contamination is vital for the concerns we are expressing on the importance of traditional and cultural use areas. We have much at stake and effective preventions of this type assist in crisis interactions. A zero discharge policy for intentional discharges of muds, cuttings, sanitary wastes, and other materials must be supported as we have discussed for generations. The discussions for siting of facilities to minimize the probability of unintentional discharges such as an oil spill are not included but need to be.

Subsection (a) (14) siting of the facilities in area where effluents and spills can be controlled or contained has not been demonstrated. Discussion of concerns that oil spills can not be contained in broken ice have continued with out answers for generations and Shell has not included any demonstrations of such. The plan also does not demonstrate why it is not feasible to implement a zero discharge policy for planned discharges of muds, cuttings, sanitary wastes, and other discharges which shows why this project is not consistent with this subsection.

11 AAC 112.270. Subsistence

We believe the statewide subsistence use Standard at 11AAC 112.270 to be intrinsically connected enforceable ACMP policy to issues of air, land, and water quality. Unless all aspects of the project are demonstrated to avoid or minimize impacts to subsistence uses of coastal resources we do not believe a given activity can be found consistent with this standard. If all reasonable and practicable steps have been taken to assure that adverse impacts to subsistence activities are minimized or avoided it would include minimizing or avoiding to the maximum extend practicable adverse impacts to air, land, and water.

NSB Proposed Alternative Measures

- 11 AAC 110.435 (a)(2)(B) allows including alternative measures, Shell would significantly reduce potential subsistence impacts. The efforts to minimize adverse effects to the bowhead harvests by Kaktovik and Nuiqsut by Shell are acknowledged. We would find the proposed drilling activities fully consistent with statewide subsistence use standard if Shell were to adopt the following:
- 1. Shell should modify the plan such that drilling would occur at a time of year when biologically vulnerability and productivity are at a minimum and when bowhead whales are not present such as during the winter months. Successful drilling in OCS exploratory drilling has occurred during winter months using bottom-founded structures in both Alaska and Canadian Beaufort Seas.

11AAC 112.280 Transportation Routes and Facilities

The project is not consistent with statewide Transportation Routes and Facilities. The project activities

requires that it avoid minimize or mitigate disruption in know or reasonably foreseeable wildlife transit, Shell has not demonstrated it will adequately avoid or minimize wildlife transit.

The baseline date for future reviews of activities in the lease sale area have been identified and Shell has not completed adequate studies. NOAA has supported this inconsistency finding.

11AAC 112.300. Habitats

The project is inconsistent with the statewide Habitats standard. The project is to avoid, minimize or mitigate the impacts to competing uses in offshore habitats. The interpreting of the meaning of competing uses are needing clarification with uses as being limited to human uses, or the use may be applied to the use of the offshore habitats by fish and wildlife.

The identified requirements for baseline data for future reviews of activities in the laeas sale area are needed. Shell has not completed adequate studies. The specific information about potential impacts to competing uses of offshore habitats, including impacts from intentional and accidental discharges. NOAA comments again reference support of the inconsistency finding.

NSB specific requests for this consistency review and proposed Alternative Measures

The NSB has submitted three additional sets of comments. Each letter provides extensive analyses of the potential effects against the ACMP enforceable policies.

The NSB appreciates the project specific measures Shell has built into the EP in efforts to avoid, minimize and mitigate adverse impacts to air and water quality standards and other environmental and human uses, we still find this project inconsistent with ACMP statewide standards.

The ACMP is a tool that can be used to add substantive alternative measures to the project to minimize to the greatest extent technically feasible the potential adverse health impacts of air pollution and marine discharges and assure the local residents.

The scale of Shells proposed activities prevents any single alternative measure to make the EP consistent with all ACMP enforceable policies. We are able to suggest alternative measures to compliance with significant portions. The alternatives measures if adopted would significantly reduce the potential adverse health impacts associated with both air emissions and marine water discharges from the proposed activities. We urge ADEC to include suggested alternative measures in AS 46.40.040 (b)(2) finding to bring the project into full consistency with the air and water quality requirements of 11 AAC 112.310. The recommendations should be required to minimize potentially serious health risks posed by the operation with the overall magnitude of air pollution emissions.

These recommendations as noted in the NSB 4 comment letters are important to reduce significant health risks. We support these comments and want to include them in the process for review. The changes recommended would significantly reduce our risks. The project should not be approved without these changes. We thank you for the opportunity to submit these comments.